

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION**

CIVIL NO. 1:06CV190

THE ESTATE OF JOHN M. MASON,)
by and through its duly appointed)
Executor, Jeannette W. Mason,)
Plaintiff,)
Vs.) **ORDER OF DISMISSAL**
UNIVERSAL UNDERWRITERS LIFE)
INSURANCE COMPANY,)
Defendant.)

)

THIS MATTER is before the Court on the Magistrate Judge's Memorandum and Recommendation, filed September 14, 2006. Pursuant to 28 U.S.C. § 636(b) and the standing Orders of Designation of this Court, United States Magistrate Judge Dennis L. Howell, was designated to consider pending motions in the captioned civil action and to submit to this Court recommendations for the disposition of these motions.

On September 14, 2006, the Magistrate Judge filed a Memorandum and Recommendation in this case containing proposed findings of fact and

conclusions of law in support of a recommendation that Defendant's motion to dismiss be allowed. The Magistrate Judge based his recommendation, in part, on the fact that despite the Plaintiff's counsel having been served with the Defendant's motion, no response or request for an extension of time to file response had been received from the Plaintiff. The parties were advised that any objections to the Magistrate Judge's findings were to be filed in writing within 14 days of service of the Recommendation; the period within which to file objections expired on October 2, 2006. Instead of filing written objections to the Memorandum and Recommendation, Plaintiff now files her brief in opposition to the Defendant's motions to dismiss and to strike and attaches a proposed amended complaint that attempts to rectify the deficiencies in the original complaint outlined by the Magistrate Judge in his recommendation. **See Memorandum and Recommendation, at 5.**

The Defendant's motion to dismiss and to strike and supporting brief were filed August 10, 2006, and served on Plaintiff's counsel electronically, through the Court's CM/ECF system, and by first class mail. Plaintiff's response was due August 28, 2006. **See L.R. 7.1(B).** No request for an extension of the response time was filed by the Plaintiff and no other

pleading was filed until her brief was filed through the Court's CM/ECF system on October 2, 2006, some 35 days late. Counsel offers no excusable neglect for the tardiness of the response, in fact, there is no mention in the brief of it being filed untimely. Also glaringly absent is any mention of or objection to the Magistrate Judge's Memorandum and Recommendation. Accordingly, the Court finds the Plaintiff's brief untimely and will order it stricken.

After a careful review of the Magistrate Judge's Recommendation, the Court finds that the proposed findings of fact are supported by the record and that the proposed conclusions of law are consistent with current case law. Accordingly, the Court hereby accepts the Magistrate Judge's Recommendation that the Defendant's motion be allowed.

IT IS, THEREFORE, ORDERED that the Plaintiff's brief filed October 2, 2006, is hereby **STRICKEN** as untimely.

IT IS FURTHER ORDERED that the Defendant's motion to dismiss is **ALLOWED**, and this matter is hereby **DISMISSED** in its entirety.

Signed: October 4, 2006



Lacy H. Thornburg
United States District Judge

